LETCHUMANAN CHETTIAR v. PALANIAPPA CHETTIAR

[O.C.J. (Ajaib Singh J.) January 22, 1977]
[Seremban — Probate Suit No. 1 of 1973]

Hindu Law — Joint Hindu family — Deceased died testate — Application of Mitakshara law — Whether deceased could dispose share in undivided assets of joint Hindu family.

Jurisdiction — Indian legislation — Hindu Succession Act 1956, s. 30 — No extra-territorial jurisdiction — Inapplicable to Hindus domiciled in Malaysia.

The deceased died testate leaving all his "... estate and effects of whatsoever nature and wheresoever situate in India, Burma, Malaysia, Singapore or elsewhere including movable and immovable assets found belonging to (him) personally as (his) separate property together with all the emoluments therefrom when accounts are taken in respect of PL. AR. Firm at Port Dickson, in connection with the Judgment and Order ... in the matter of Civil Suit No. 34 of 1951 in the High Court at Seremban plus (his) one-third share of all the movable and immovable assets in the joint Hindu Family Firm of PL. AR. at Port Dickson...." The plaintiff claimed that he was the executor appointed under the said will and prayed that probate be granted to him. He stated that the defendant though a lawful son of the deceased and one of the persons entitled to share in the estate in the event of intestacy in accordance with *Mitakshara law* (which governs the joint Hindu family) was not entitled to any share in the emoluments of the deceased's estate. The defendant, his step-brother, had entered a caveat against the property and had claimed to be a coparcener in the joint Hindu family. On July 15, 1950 the defendant had filed a suit for partition of the family property and by doing so the defendant became a separated member from the joint Hindu family.

The defendant, on the other hand, contended that he was the lawful elder son of the deceased and under Hindu law one of the persons entitled to share in the estate of the deceased in the event of intestacy. He claimed that he was entitled to one-third share of the firm's income from the year of the firm's inception.

The parties in this case were governed by *Mitakshara law* and the issue was whether the deceased could lawful dispose of by will his one-third share in the joint Hindu family firm of PL. AR. in Port Dickson.

Held: (1) the legislation of any country can have no extra-territorial jurisdiction. Section 30 of the Hindu Succession Act 1956 which allows Hindus governed by the *Mitakshara law* to dispose of by will their undivided interests in their coparcenary properties cannot apply to Hindus domiciled in Malaysia. The latter must continue to be governed by their original personal and customary laws unaffected by any legislative changes to those laws which may be made from time to time by the country of their origin. Only the legislature of their domicil can make a change in their personal and customary laws;

(2) the parties were governed by the *Mitakshara law* under which a coparcener cannot dispose of by will his undivided coparcenary interest except where he is the sole surviving coparcener in which case he may bequeath the joint family property as if it was his own separate property;

(3) at the time of making his will and at his death the deceased was not separated from his joint Hindu family nor was he a sole surviving coparcener. He could not therefore according to the *Mitakshara law* bequeath his one-third share in the undivided assets of the joint Hindu family firm of PL. AR. in Port Dickson.

[Editorial Note: The plaintiff's appeal to the Federal Court (F.C. Civil Appeal 47/77) was allowed on September 24. 1977.]

Case referred to:-

(1) *Raghavamma & Anor.* v. *Chenchamma & Anor.* A.I.R. 1964 S.C. 136, 147.

PROBATE SUIT.

Atma Singh Gill for the plaintiff.

N.A. Marjoribanks for the defendant.

Ajaib Singh J.: The plaintiff in this suit claims that he is the executor appointed under the will of PL. AR. Arunasalam Chettiar and prays that probate of the said will be granted to him. In his affidavit dated November 21, 1973 the plaintiff states that the deceased died on August 19, 1972 in India having made and duly executed his last will and testament dated March 19, 1966 appointing the plaintiff as the sole executor. The plaintiff states further that the defendant is a lawful son of the deceased and one of the persons entitled to share in the estate in the event of intestacy in accordance with the Mitakshara law which governs the joint Hindu family of the deceased but that the defendant is not entitled to any share in the deceased's estate on the ground that the defendant has become a separated member from the joint family.

In his defence filed in the proceedings the defendant states that he is the lawful elder son of the deceased and under Hindu law one of the persons entitled to share in the estate of the deceased in the event of intestacy. He alleges that the will of the deceased is invalid under Hindu law as the deceased had no right or justification to disinherit the defendant. He further averred that in Seremban High Court Civil Suit No. 34 of 1951 it was ordered that the defendant was entitled to one-third share of the property of PL. AR. firm and one-third share of the firm's income from the year of the firm's inception in 1924. The accounts as ordered by the court have not yet been taken and the defendant has not extracted the said shares in the property and income of the PL. AR. firm. The deceased was not entitled to deal with the property of the firm and the will was therefore invalid. He averred further that the deceased being a member of a joint Hindu family he could not bequeath any property till the partition of the joint family property was effected and the assets distributed. The defendant therefore prayed that the court should pronounce against the will and hold that the defendant is entitled to share in the estate of the deceased and also entitled to the grant of letters of administration of the estate of the deceased.

In his oral testimony before me the plaintiff said that his mother was the first executor of the will and she having renounced her right to the executorship he himself became the sole executor. The deceased had left property in Port Dickson and in Seremban. The defendant was his step-brother who had entered a caveat against the property and was claiming to be a coparcener in the joint Hindu family. On July 15, 1950 the defendant filed a suit for a partition of the family property and by doing so the defendant became a separated member from the joint Hindu family. After the partition the plaintiff and his father remained in the joint family and the plaintiff said that having become a separated member from the joint Hindu family the defendant had no share in the deceased's estate.

No witness was called to testify on behalf of the defendant and Mr. Marjoribanks who appeared for him conceded that he could not oppose the order for probate to be granted to the plaintiff but submitted that a part of the property bequeathed by the deceased

in his will must go on an intestacy because that part was the joint family property and could not be willed away by the deceased. The relevant portion in the will bequeathing the property of the deceased is as follows: —

"... I give devise and bequeath all my estate and effects of whatsoever nature and wheresoever situate in India, Burma, Malaysia, Singapore or elsewhere including movable and immovable assets found belonging to me personally as my separate property together with all the emoluments therefrom when accounts are taken in respect of PL. AR. Firm at Port Dickson, in connection with the Judgment and Order in the Federal Court of Appeal of Malaysia (Appellate Jurisdiction) in Civil Appeal No. 61 of 1964, dated March 14, 1966, in the matter of Civil Suit No. 34 of 1951 in the High Court in Malaya at Seremban plus my one-third share of all the movable and immovable assets in the Joint Hindu Family Firm of PL. AR. at Port Dickson. ..."

Mr. Marjoribanks submitted that the one-third share of all the movable and immovable assets in the joint Hindu family firm of PL. AR. at Port Dickson could not be bequeathed by the deceased because that share was part of the joint Hindu family and was not the separate personal property of the deceased. In support of this contention Mr. Marjoribanks referred to the case of *Raghavamma & Anor.* v. *Chenchamma & Anor.*[1] wherein it was held that a member of an undivided coparcenary has the legal capacity to execute a will but he cannot validly bequeath his undivided interest in the joint family property.

Mr. Atma Singh Gill for the plaintiff submitted that the deceased had the capacity to execute a will and therefore make a valid bequest of all his property whether it belonged to him personally or was in the joint Hindu family. He said that the defendant having become a separated member from the joint family he had no further right to the deceased's property.

The only issue in this case which was eventually left to be determined by the court was whether the deceased could lawfully dispose of by will his one-third share in the joint Hindu family firm of PL. AR. in Port Dickson. The personal and customary Hindu law extends to Hindus domiciled in Malaysia and the parties in this case before me are governed by the Mitakshara law. Under both the Mitakshara and the Dayabhaga schools of law a Hindu can dispose of by will his own separate or self-acquired property and according to the Dayabhaga law he may dispose of by will not only his own personal property but also his interest in the undivided joint family property. But the position is different according to the Mitakshara law. Under the Mitakshara law if after making his will and before his death a testator becomes a separate member from the joint Hindu family any bequest that he might have made in his will with regard to his own share in the undivided property would be held good but not if he dies as a member of the joint Hindu family. In the latter event his own interest in the joint property goes to his family and his purported attempt to give away that interest in his will can have no effect. In short a coparcener cannot according to Mitakshara law dispose of by will his undivided coparcenary interest except where he is the sole surviving coparcener in which case he may bequeath the joint family property as if it was his own separate property. (See generally the chapter on Wills in *Mulla's* Hindu Law, 14th Edition). In the case of *Raghavamma* v. *Chenchamma, supra,* Subba Rao J. had this to say: —

"... A member of an undivided coparcenary has the legal capacity to execute a will; but he cannot validly bequeath his undivided interest in the joint family property. If he died an undivided member of the family, his interest survives to the other members of the family, and therefore, the will cannot operate on the interest of the joint family property. But if he was separated from the family before his death, the bequest would take effect. ..."

Section 30 of the Hindu Succession Act 1956 of India now allows Hindus governed by the Mitakshara law to dispose of by will their undivided interests in their coparcenary properties. The preamble to this enactment states that it is an Act to amend and codify the law relating to intestate succession among Hindus and it extends to the whole of India except the State of Jammu and Kashmir. The legislation of any country can have no extra-territorial jurisdiction and the Indian Act of 1956 cannot apply to Hindus domiciled in Malaysia who must continue to be governed by their original personal and customary laws unaffected by any legislative changes to those laws which may be made from time to time by the country of their origin. Our own legislature alone can make a change in their personal and customary laws. It is on this footing therefore that the present case has to be decided. At the time of making his will and at his death the deceased was not separated from his joint Hindu family nor was he a sole surviving coparcener. He could not therefore according to the Mitakshara law bequeath his one-third share in the undivided assets of the joint Hindu family firm of PL. AR. in Port Dickson. In the circumstances therefore I order that probate of the will be granted to the plaintiff except that the testator's one-third share in the joint Hindu family firm of PL. AR. in Port Dickson be excluded and I further order that this one-third share shall form part of the deceased's estate as on an intestacy. In all the circumstances of this case I order that each party bears its own costs.

Order accordingly.

Solicitors: *Gill & Tang; Lovelace & Hastings.*